

§ 385.27

33 CFR Ch. II (7-1-04 Edition)

the Assistant Secretary's recommendations regarding authorization to Congress.

§ 385.27 Project Cooperation Agreements.

(a) *General.* Prior to initiating construction or implementation of a project, the Corps of Engineers shall execute a Project Cooperation Agreement with the non-Federal sponsor in accordance with applicable law.

(b) *Verification of water reservations.* The Project Cooperation Agreement shall include a finding that the South Florida Water Management District or the Florida Department of Environmental Protection has executed under State law the reservation or allocation of water for the natural system as identified in the Project Implementation Report. Prior to execution of the Project Cooperation Agreement, the District Engineer shall verify in writing that the South Florida Water Management District or the Florida Department of Environmental Protection has executed under State law the reservation or allocation of water for the natural system as identified in the Project Implementation Report. The District Engineer's verification shall provide the basis for the finding in the Project Cooperation Agreement and be made available to the public.

(c) *Changes to water reservations.* Reservations or allocations of water are a State responsibility. Any change to the reservation or allocation of water for the natural system made under State law shall require an amendment to the Project Cooperation Agreement.

(1) The District Engineer shall, in consultation with the South Florida Water Management District, the Florida Department of Environmental Protection, the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and other Federal, State, and local agencies, verify in writing that the revised reservation or allocation continues to provide for an appropriate quantity, timing, and distribution of water dedicated and managed for the natural system after considering any changed circumstances or new informa-

tion since completion of the Project Implementation Report. In accordance with applicable State law, the non-Federal sponsor shall provide opportunities for the public to review and comment on any proposed changes in the water reservation made by the State.

(2) The Secretary of the Army shall notify the appropriate committees of Congress whenever a change to the reservation or allocation of water for the natural system executed under State law as described in the Project Implementation Report has been made. Such notification shall include the Secretary's and the State's reasons for determining that the revised reservation or allocation continues to provide for an appropriate quantity, timing, and distribution of water dedicated and managed for the natural system after considering any changed circumstances or new information since completion of the Project Implementation Report. The Secretary of the Army's notification to the appropriate committees of Congress shall be made available to the public.

(d) *Savings clause provisions.* The Project Cooperation Agreement shall ensure that the Corps of Engineers and the non-Federal sponsor not:

(1) Eliminate or transfer existing legal sources of water until a new source of comparable quantity and quality as that available on the date of enactment of WRDA 2000 is available to replace the water to be lost as a result of implementation of the Plan; and

(2) Reduce levels of service for flood protection that are:

(i) In existence on the date of enactment of WRDA 2000; and

(ii) In accordance with applicable law.

§ 385.28 Operating Manuals.

(a) *General provisions.* (1) The Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and

other Federal, State, and local agencies, develop Operating Manuals to ensure that the goals and purposes of the Plan are achieved.

(2) Operating Manuals shall consist of a System Operating Manual and Project Operating Manuals. In general, the System Operating Manual provides a system-wide operating plan for the operation of the projects of the Plan and other C&SF Project features and the Project Operating Manuals provide the details necessary for integrating the operation of the individual projects with the system operation described in the System Operating Manual.

(3) In accordance with §385.18, the public shall have the opportunity to review and comment on draft Operating Manuals.

(4) The Division Engineer and the non-Federal sponsor shall approve completed Operating Manuals.

(5) The Corps of Engineers and the South Florida Water Management District shall develop a guidance memorandum in accordance with §385.5 for approval by the Secretary of the Army, with the concurrence of the Secretary of the Interior and the Governor, that describes the content of Operating Manuals and the tasks necessary to develop Operating Manuals.

(6) Operating Manuals shall:

(i) Be consistent with the goals and purposes of the Plan;

(ii) Comply with NEPA, in accordance with §385.14.

(iii) Describe regulation schedules, water control, and operating criteria for a project, group of projects, or the entire system;

(iv) Make provisions for the natural fluctuation of water made available in any given year and fluctuations necessary for the natural system as described in the Plan;

(v) Be consistent with applicable water quality standards and applicable water quality permitting requirements;

(vi) Be consistent with the reservation or allocation of water for the natural system and the savings clause provisions described in the Project Implementation Report and the Project Cooperation Agreement and the provisions of §385.35(b), §385.36, and §385.37 and reflect the operational criteria used in the identification of the appro-

priate quantity, timing, and distribution of water dedicated and managed for the natural system;

(vii) Include a drought contingency plan as required by §222.5(i)(5) of this chapter and Engineer Regulation ER 1110-2-1941 "Drought Contingency Plans" that is consistent with the Water Rights Compact Among the Seminole Tribe of Florida, the State of Florida, and the South Florida Water Management District and Florida Administrative Code Section 40E-21 (Water Shortage Plan) and Florida Administrative Code Section 40E-22 (Regional Water Shortage Plan); and

(viii) Include provisions authorizing temporary short-term deviations from the Operating Manual for emergencies and unplanned circumstances, as described in applicable Corps of Engineers regulations, including §222.5(f)(4) and §222.5(i)(5) of this chapter, and Engineer Regulation ER 1110-2-8156 "Preparation of Water Control Manuals." However, deviations shall be minimized by including planning for flooding events caused by rainfall and hurricane events, as well as by including a drought contingency plan.

(A) *Emergency deviations.* Examples of some emergencies that can be expected to occur at a project are: drowning and other accidents, failure of the operation facilities, chemical spills, treatment plant failures and other temporary pollution problems. Water control actions necessary to abate the problem are taken immediately unless such action would create equal or worse conditions.

(B) *Unplanned circumstances.* There are unplanned circumstances that create a temporary need for minor deviations from the Operating Manual, although they are not considered emergencies. Deviations are sometimes necessary to carry out maintenance and inspection of facilities. Requests for deviations for unplanned circumstances generally involve time periods ranging from a few hours to a few days. Approval of these changes shall be obtained from the Division Engineer.

(7) Except as provided in this part, operating manuals generally shall follow the procedures for water control

plans in §222.5 of this chapter and applicable Corps of Engineers regulations for preparation of water control manuals and regulation schedules, including Engineer Regulation ER 1110-2-8156.

(b) *System Operating Manual.* (1) Not later than December 31, 2005, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a System Operating Manual that provides a system-wide operating plan for the operation of implemented projects of the Plan and other Central and Southern Florida Project features to ensure that the goals and purposes of the Plan are achieved.

(2) The System Operating Manual shall initially be based on the existing completed Central and Southern Florida Project features and shall be developed by the Corps of Engineers as provided in §222.5(g) of this chapter and by the South Florida Water Management District as its laws and regulations require. Existing water control plans, regulation schedules, and Master Water Control Plans for the Central and Southern Florida Project shall remain in effect until approval of the System Operating Manual.

(3) The System Operating Manual shall be revised whenever the Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, believe it is necessary to ensure that the goals and purposes of the Plan are achieved.

(4) Except as provided in this part, the System Operating Manual shall follow the procedures for preparation of water control manuals, regulation schedules and Master Water Control Manuals in §222.5 of this chapter and

applicable Corps of Engineers regulations.

(5) The Corps of Engineers and the South Florida Water Management District shall provide notice and opportunity for public comment for any significant modification to the System Operating Manual.

(c) *Project Operating Manuals.* (1) The Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a Project Operating Manual for each project of the Plan that is implemented.

(2) Project Operating Manuals shall be considered supplements to the System Operating Manual, and present aspects of the projects not common to the system as a whole.

(3) Each Project Implementation Report shall, as appropriate, include a draft Project Operating Manual as an appendix to the Project Implementation Report.

(4) As appropriate, the draft Project Operating Manual shall be revised for the project construction phase and the operational monitoring and testing phase after completion of project construction.

(5) The final Project Operating Manual shall be completed as soon as practicable after completion of the operational testing and monitoring phase of the project. The completed project shall continue to be operated in accordance with the approved draft Project Operating Manual until the final Project Operating Manual is approved.

(6) The Corps of Engineers and the non-Federal sponsor shall provide notice and opportunity for public comment for any significant modification to the Project Operating Manual.

§385.29 Other project documents.

(a) As appropriate, the Corps of Engineers and the non-Federal sponsor may prepare design documents to provide additional design information needed for projects. Such documents shall be approved in accordance with applicable